

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1085

AN ACT

To repeal sections 523.010, 523.040, and 523.070, RSMo, and to enact in lieu thereof three new sections relating to the taking of property.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 523.010, 523.040, and 523.070, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 523.010, 523.040, and 523.070, to read as follows:

523.010. 1. In case land, or other property, is sought to be appropriated by any road, railroad, street railway, telephone, telegraph or any electrical corporation organized for the manufacture or transmission of electric current for light, heat or power, including the construction, when that is the case, of necessary dams and appurtenant canals, flumes, tunnels and tailraces and including the erection, when that is the case, of necessary electric steam powerhouses, hydroelectric powerhouses and electric substations or any oil, pipeline or gas corporation engaged in the business of transporting or carrying oil, liquid

fertilizer solutions, or gas by means of pipes or pipelines laid underneath the surface of the ground, or other corporation created under the laws of this state for public use, and such corporation and the owners cannot agree upon the proper compensation to be paid, or in the case the owner is incapable of contracting, be unknown, or be a nonresident of the state, such corporation may apply to the circuit court of the county of this state where such land or any part thereof lies by petition setting forth the general directions in which it is desired to construct its road, railroad, street railway, telephone, or telegraph line or electric line, including, when that is the case, the construction and maintenance of necessary dams and appurtenant canals, tunnels, flumes and tailraces and, when that is the case, the appropriation of land submerged by the construction of such dam, and including the erection and maintenance, when that is the case, of necessary electric steam powerhouses, hydroelectric powerhouses and electric substations, or oil, pipeline, liquid fertilizer solution pipeline, or gas line over or underneath the surface of such lands, a description of the real estate, or other property, which the company seeks to acquire; the names of the owners thereof, if known; or if unknown, a pertinent description of the property whose owners are unknown and praying the [appointment] selection of three disinterested residents of the county, as commissioners as prescribed in section 523.040, or a jury, to assess the damages

which such owners may severally sustain in consequence of the establishment, erection and maintenance of such road, railroad, street railway, telephone, telegraph line, or electrical line including damages from the construction and maintenance of necessary dams and the condemnation of land submerged thereby, and the construction and maintenance of appurtenant canals, flumes, tunnels and tailraces and the erection and maintenance of necessary electric steam powerhouses, hydroelectric powerhouses and electric substations, or oil, pipeline, or gas line over or underneath the surface of such lands; to which petition the owners of any or all as the plaintiff may elect of such parcels as lie within the county or circuit may be made parties defendant by names if the names are known, and by the description of the unknown owners of the land therein described if their names are unknown.

2. If the proceedings seek to affect the lands of persons under conservatorship, the conservators must be made parties defendant. If the present owner of any land to be affected has less estate than a fee, the person having the next vested estate in remainder may at the option of the petitioners be made party defendant; but if such remaindermen are not made parties, their interest shall not be bound by the proceedings.

3. It shall not be necessary to make any persons party defendants in respect to their ownership unless they are either in actual possession of the premises to be affected claiming

title or having a title of the premises appearing of record upon the proper records of the county.

4. Except as provided in subsection 5 of this section, nothing in this chapter shall be construed to give a public utility, as defined in section 386.020, RSMo, or a rural electric cooperative, as provided in chapter 394, RSMo, the power to condemn property which is currently used by another provider of public utility service, including a municipality or a special purpose district, when such property is used or useful in providing utility services, if the public utility or cooperative seeking to condemn such property, directly or indirectly, will use or proposes to use the property for the same purpose, or a purpose substantially similar to the purpose that the property is being used by the provider of the public utility service.

5. A public utility or a rural electric cooperative may only condemn the property of another provider of public utility service, even if the property is used or useful in providing utility services by such provider, if the condemnation is necessary for the public purpose of acquiring a nonexclusive easement or right-of-way across the property of such provider and only if the acquisition will not materially impair or interfere with the current use of such property by the utility or cooperative and will not prevent or materially impair such provider of public utility service from any future expansion of its facilities on such property.

6. If a public utility or rural electric cooperative seeks to condemn the property of another provider of public utility service, and the conditions in subsection 4 of this section do not apply, this section does not limit the condemnation powers otherwise possessed by such public utility or rural electric cooperative.

7. For any taking of property, the state, any political subdivision of this state, or any other entity with the power to take property shall declare and disclose to the public, by publication of notice at least three times in a newspaper of general circulation in the county in which the property is located, and the affected landowners the exact location of such property and its specific intended use, which shall not include private development purposes, except as otherwise provided in chapter 99, 100, or 353, RSMo, and such property shall not be utilized for any other use or leased to anyone other than the owner of record or otherwise transferred to another entity. Any entity which is a public utility as defined pursuant to section 386.020, RSMo, a public utility authorized pursuant to section 71.520, RSMo, a cooperative authorized pursuant to section 394.030, RSMo, or any state department or agency, however, may only transfer property within the approved service area of a section 71.520, RSMo, public utility or section 394.030, RSMo, cooperative without meeting the requirements of this subsection. Any entity taking property pursuant to this subsection shall

restore and maintain the property in a manner permitting the property owner to cut or mow grass and weeds. If the entity taking the property fails, within ten years of such taking, to use or no longer desires to use such property for its specific intended use, the owner of record of such property shall have the right of first refusal to any proposed transfer of the property and may repurchase the property for an amount not greater than the amount the original property owner received for the taking of such property, using the same or substantially similar valuation and appraisal process. Documentation of the valuation and appraisal process shall be maintained and made available for inspection upon request of the parties, and an entity shall negotiate any repurchase of such property in good faith; provided, however, that the exercise of such repurchase rights shall not be allowed if the repurchase of the property would materially adversely affect the ingress and egress rights of another property owner. If the owner of record does not repurchase the property within ninety days, the entity taking the property may transfer it without restriction. This subsection shall not apply to any city not within a county, any county with a charter form of government and with more than one million inhabitants, any home rule city with more than four hundred thousand inhabitants and located in more than one county, and any county which contains any part of a home rule city with more than four hundred thousand inhabitants and located in more than one

county.

523.040. The court, or judge thereof in vacation, on being satisfied that due notice of the pendency of the petition has been given, shall [appoint] authorize the selection of three disinterested commissioners[, who]. One commissioner shall be selected by the party seeking condemnation, one commissioner shall be selected by the property owner or owners of the property to be condemned, and a third commissioner shall be an independent appraiser jointly selected and agreed upon by the party seeking condemnation and the property owner of the property to be condemned. If the property owners of the property to be condemned fail to agree on the selection of the second commissioner within thirty days of court authorization, the court shall appoint an independent appraiser as the second commissioner. If the party seeking condemnation and the property owner or owners fail to agree on the selection of the third commissioner, the court shall appoint an independent appraiser as the third commissioner. Costs shall be paid as provided in section 523.070. Such commissioners shall be residents of the county in which the real estate or a part thereof is situated, to assess the damages which the owners may severally sustain by reason of such appropriation, who, after having viewed the property, shall return to the clerk of such court, under oath, their report in duplicate, of such assessment of damages, setting forth the amount of damages allowed to the person or persons

named as owning or claiming the tract of land condemned, and should more than one tract be condemned in the petition, then the damages allowed to the owner, owners, claimant or claimants of each tract, respectively, shall be stated separately, together with a specific description of the tracts for which such damages are assessed; and the clerk shall file one copy of said report in [his] the clerk's office and record the same in the order book of the court, and [he] the clerk shall deliver the other copy, duly certified by [him] clerk, to the recorder of deeds of the county where the land lies (or to the recorder of deeds of the city of St. Louis, if the land lies in said city) who shall record the same in his or her office, and index each tract separately as provided in section 59.440, RSMo, and the fee for so recording shall be taxed by the clerk as costs in the proceedings; and thereupon such company shall pay to the clerk the amount thus assessed for the party in whose favor such damages have been assessed; and on making such payment it shall be lawful for such company to hold the interest in the property so appropriated for the uses prescribed in this section; and upon failure to pay the assessment, the court may, upon motion and notice by the party entitled to such damages, enforce the payment of the same by execution, unless the said company shall, within ten days from the return of such assessment, elect to abandon the proposed appropriation of any parcel of land, by an instrument in writing to that effect, to be filed with the clerk of the court, and



entered on the minutes of the court, and as to so much as is thus abandoned, the assessment of damages shall be void.

523.070. The cost of the proceeding to appropriate the right-of-way shall be paid by the company seeking the appropriation, [up to and] including the filing and copying of the report of the commissioners' and [the court, as to] any reasonable and necessary costs made by subsequent litigation[, may make such order as in its discretion may be deemed just]. The court shall allow the commissioners a reasonable compensation for their services, which shall be taxed as costs in the proceedings.